

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

MICHAEL E. JOHNSON,
Plaintiff,

v.

S. BELL, et al.,
Defendants.

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CIVIL ACTION NO. JFM-09-2128

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MEMORANDUM

On August 13, 2009, the court received a civil rights complaint from plaintiff Michael E. Johnson, an inmate incarcerated at the North Branch Correctional Institution (“NBCI”), stating that correctional employees Bell and Mayberry assaulted him while he was incarcerated at the Patuxent Institution. He further complains that Chief Butler directed he be returned to his cell without receiving medical care. Plaintiff states that defendants failed to follow their own rules and procedures. Plaintiff indicates he did not file an administrative remedy regarding any of his complaints. Paper No. 1.

Defendants filed a motion to dismiss, or in the alternative for summary judgment. Paper No. 12. Plaintiff has not filed an opposition.¹ No hearing is necessary. *See Local Rule 105.6* (D. Md. 2010). For the reasons stated below, the dispositive motion filed by defendants, treated as a motion for summary judgment, will be granted.

¹Pursuant to the dictates of *Roseboro v. Garrison*, 528 F.2d 309, 310 (4th Cir. 1975), on March 23, 2010, plaintiff was notified that defendants had filed a dispositive motion, the granting of which could result in the dismissal of his action. Paper No. 13. Plaintiff was also informed that he was entitled to file materials in opposition to that motion within seventeen days from the date of that letter and that his failure to file a timely or responsive pleading or to illustrate, by affidavit or the like, a genuine dispute of material fact, could result in the dismissal of his case or in the entry of summary judgment without further notice of the court. *Id.*

Background

Defendants state that there is no documentation that plaintiff was assaulted or that force was used against him by correctional staff on August 11, 2009. Paper No. 12, Ex. 1. No medical records exist which show that plaintiff complained of being assaulted on August 11, 2009. *Id.* Both officers accused of assaulting plaintiff aver that they do not recall any incident involving plaintiff on August 11, 2009, and have never assaulted plaintiff, written a false report against him, directed another staff member to write a false report, threatened plaintiff, or denied him medical treatment. *Id.* Exs. 3 and 4.

Standard of Review

A. Motion to Dismiss

The purpose of a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) is to test the sufficiency of the plaintiff's complaint. *See Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). The dismissal for failure to state a claim upon which relief may be granted does not require defendant to establish "beyond doubt" that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *See Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1968-69 (2007). Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint. *Id.* at 1969. The court need not, however, accept unsupported legal allegations, *see Revene v. Charles County Comm'rs*, 882 F.2d 870, 873 (4th Cir. 1989), legal conclusions couched as factual allegations, *see Papasan v. Allain*, 478 U.S. 265, 286 (1986), or conclusory factual allegations devoid of any reference to actual events, *see United Black Firefighters v. Hirst*, 604 F.2d 844, 847 (4th Cir. 1979).

B. Motion for Summary Judgment

Fed. R. Civ. P. 56(c) provides that summary judgment:

should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The Supreme Court has clarified that this does not mean that any factual dispute will defeat the motion:

By its very terms, this standard provides that the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact.

Anderson v. Liberty Lobby, Inc., 477 U. S. 242, 247-48 (1986) (emphasis in original).

“The party opposing a properly supported motion for summary judgment ‘may not rest upon the mere allegations or denials of [his] pleadings,’ but rather must ‘set forth specific facts showing that there is a genuine issue for trial.’” *Bouchat v. Baltimore Ravens Football Club, Inc.*, 346 F.3d 514, 525 (4th Cir. 2003) (alteration in original) (quoting Fed. R. Civ. P. 56(e)). The court should “view the evidence in the light most favorable to....the nonmovant, and draw all inferences in her favor without weighing the evidence or assessing the witness’ credibility.”

Dennis v. Columbia Colleton Med. Ctr., Inc., 290 F.3d 639, 644-45 (4th Cir. 2002). The court must, however, also abide by the “affirmative obligation of the trial judge to prevent factually unsupported claims and defenses from proceeding to trial.” *Bouchat*, 346 F.3d at 526 (internal quotation marks omitted) (quoting *Drewitt v. Pratt*, 999 F.2d 774, 778-79 (4th Cir. 1993), and citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986)).

Analysis

The court must first examine defendants’ assertion that plaintiff’s case should be dismissed in its entirety due to plaintiff’s failure to exhaust available administrative remedies.

The Prison Litigation Reform Act [“PLRA”] generally requires a prisoner plaintiff to exhaust administrative remedies before filing suit in federal court. Title 42 U.S.C. § 1997e(a) provides that “[n]o action shall be brought with respect to prison conditions under § 1983 of this title, or any other Federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” The Supreme Court has interpreted the language of this provision broadly, holding that the phrase “prison conditions” encompasses “all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Thus, the exhaustion provision plainly extends to plaintiff’s allegations. His complaint must be dismissed, unless he can show that he has satisfied the administrative exhaustion requirement under the PLRA or that defendants have forfeited their right to raise non-exhaustion as a defense. *See Chase v. Peay*, 286 F.Supp.2d 523, 528 (D. Md. 2003).

The PLRA’s exhaustion requirement is designed so that prisoners pursue administrative grievances until they receive a final denial of the claims, appealing through all available stages in the administrative process. *See Chase*, 582 F.Supp.2d at 530; *see also Gibbs v. Bureau of Prisons*, 986 F.Supp. 941, 943-44 (D. Md. 1997) (dismissing a federal prisoner’s lawsuit for failure to exhaust, where plaintiff did not appeal his administrative claim through all four stages of the BOP’s grievance process); *Booth v. Churner*, 532 U.S. 731, 735 (2001) (affirming dismissal of prisoner’s claim for failure to exhaust where he “never sought intermediate or full administrative review after prison authority denied relief”); *Thomas v. Woolum*, 337 F.3d 720, 726 (6th Cir. 2003) (noting that a prisoner must appeal administrative rulings “to the highest possible administrative level”); *Pozo v. McCaughtry*, 286 F.3d 1022, 1024 (7th Cir. 2002)

(prisoner must follow all administrative steps to meet the exhaustion requirement, but need not seek judicial review).

In Maryland, filing a request for administrative remedy with the Warden of the prison in which one is incarcerated is the first of three steps in the Administrative Remedy Procedure (“ARP”) process provided by the Division of Correction to its prisoners. If this request is denied, the prisoner has ten calendar days to file an appeal with the Commissioner of Correction. If this appeal is denied, the prisoner has thirty days in which to file an appeal to the Executive Director of the Inmate Grievance Office (“IGO”). *See* Md. Code Ann. Corr. Serv. §§ 10-206, 10-210; Md. Regs. Code title 12 § 07.01.03.

It is clear that plaintiff did not exhaust any of his claims; in fact, plaintiff failed to even begin the administrative process due to his belief that he had the right to petition this court regarding alleged civil rights violations irrespective of available administrative remedies. Paper No. 1.

Conclusion

Defendants’ dispositive motion is granted. Judgment shall be entered in favor of defendants and against plaintiff. A separate order follows.

August 10, 2010
Date

/s/
J. Frederick Motz
United States District Judge